

REMARKS/ARGUMENTS**I. Introduction**

Claims 13-22 are pending and stand rejected. Applicants herewith cancel claims 13-14 and 17-22, add new claims 23-25 and amend claim 15. With the entry of this amendment, claims 15, 16 and 23-25 will be pending and active. Applicants assert that the entry of this amendment is proper as support for the amendment and new claims can be found at page 4, line 30 to page 5, line 15.

II. The Examiner's Rejections**A. Rejections Under 35 U.S.C. § 112, second paragraph**

The Examiner has rejected claims 15 and 16 under 35 U.S.C. §112, second paragraph, as being indefinite. According to the Examiner, Claim 15 is vague and indefinite because the metes and bounds of the intended sequences that are "homologous" to the VP26 region are not defined. This affects dependent claim 16. Applicants respectfully traverse this rejection. The specification amply describes what is meant by homologous. See for instance, page 4, line 30 to page 5, line 24. However, in further response, applicants herewith amend claim 15. In this amendment and in the new claims, the word homologous is not used. Rather, applicants define the invention with reference to a specific range of amino acids with the VP 26 region. This embodiment is described in the specification, *inter alia*, at page 4, line 30 to page 5, line 15. In view of this amendment, applicants respectfully request the Examiner to withdraw this rejection.

B. Rejections Under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 15-16 under 35 U.S.C. §112, first paragraph. The Examiner alleges that in the instant case applicants have disclosed AA 12 to 235 of VZV VP26 to be utilized in a diagnostic assay and react with serum antibodies only and do not provide any guidance for homology sequences. The Examiner further asserts that the specification is silent as to the criteria used to obtain variables homologous to the selected amino acids region. In addition, there is no evidence or support in the specification indicating that the multiple homologous variations would render the positive immunoreactive response, and there is not enough information about it in literature either to guide one of ordinary skill in the art to predict the undisclosed regions. Applicants respectfully traverse this rejection.

The present claims recite sizes of portions of the VP 26 region. The claims also recite that the claimed peptides are immunoreactive, which means according to the specification, that such peptides cross-react with an antibody specific for VP 26 (page 4, line 30-31). The specification enables one of skill in the art to determine, without undue experimentation, which peptides meet those limitations. In view of the above amendments and new claims and this explanation, applicants respectfully request the Examiner to withdraw this rejection.

C. Rejections under 35 U.S.C. §102

Claims 15-16 are rejected under 35 U.S.C. §102(b) as being anticipated by Davison et al. (J. of General Virology, 1992). Claims 15-16 are rejected under 35 U.S.C. §102(b) as being anticipated by Ellis *et al.* (U.S. Patent No. 4,686,101) ("Ellis"). Claims 15-16 are rejected under 35 U.S.C. §102(b) as being anticipated by Davison *et*

al. (J. of General Virology, 1986, Vol. 67, pages 1759-1816) ("Davison"). The Examiner explains that the protein described in Ellis is homologous to VP26 and that Davison describes VP26. Applicants traverse this rejection as it may be applicable to the amended claims and new claims 23-25. Neither of these references teaches nor directs the skilled artisan to the portions of VP 26 recited in the amended claims. As such, neither reference anticipates the claimed invention and the Examiner's rejection under § 102 should be withdrawn.

III. Conclusion

In view of the above amendments and remarks, it is respectfully submitted that claims 15-16 and 23-25 are in condition for allowance. Early notice of allowance is earnestly solicited. The Examiner is invited to telephone the undersigned at the number listed below if the Examiner believes such would be helpful in advancing the application to issue.

Respectfully submitted,

Date: 3/3/06

By Patricia D. Granados

Patricia D. Granados
Attorney for Applicant
Registration No. 33,683

Customer No. 26633
HELLER EHRMAN LLP
1717 Rhode Island Avenue, NW
Washington, DC 20036-3001
Telephone: (202) 912-2142
Facsimile: (202) 912-2020